IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1629 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
IKBALBHAI HASUBHAI MINOR THRO'GUARDIAN HASUBHAI KALUBHAI - Defendant(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
RULE UNSERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 07/11/2006

ORAL JUDGMENT

1. The appellant Gujarat State Road Transport has challenged the judgment and award made by MACT (Aux.), Rajkot dated 31st January, 1984. By the said award the Tribunal has granted compensation of Rs.69,000=00 to

respondent no. 1 who had received serious in a vehicular accident which occurred on 11th August, 1982 at about 9:30 hours. On that day, he was travelling in a bus belonging to the appellant and which was running on Porbandar - Surat route. When it reached place called Maliasan, another vehicle came from the opposite direction and dashed against the bus of the appellant. As a result of the same, the tin portion of the bus got torn, causing deep cut on the left hand of the respondent, who was sitting behind the driver. He was immediately removed to the hospital where ultimately, the hand was amputated. Since at the time of accident he was aged about 16 ½ years, the claim was preferred by him through his natural guardian Ikbalbhai Hasubhai Makadia who is his father. The claim was for Rs. 1 lakh.

2. At the trial, the parties led evidence oral as well as documentary. On the basis of the material produced before it, the Tribunal came to the conclusion that so far as the driver of the bus belonging to the appellant was concerned, he was negligent to the extent of 20%, whereas the negligence of other driver was to the extent of 80%. The Tribunal also assessed compensation at Rs.69,000=00. The Tribunal ultimately directed that since there was composite liability, the appellant as well as the insurance Company of the offending vehicle were liable to satisfy the award. The compensation was to be

paid together with proportionate costs and interest at the rate of 6% per annum from the date of the petition till realization. It appears that the other offending vehicle's identity was not known and, therefore, even at the stage of trial, the driver, the owner and the insurance company of the said vehicle stood deleted from the said proceedings. Only the driver of the bus of the appellant and appellant continued to be the opponents in the claim case. However, since the liability was composite they are required to initially satisfy the award. The appellant being aggrieved by the said judgment and award has now preferred this appeal.

3. I have perused the record and proceedings of the case and in particular, the oral evidence of the claimant i.e., respondent no. 1 and driver of the appellant. I have also perused the panchnama which is at Exh. 30 and F.I.R., which is at Exh. 29, which is filed against other offending vehicle. I have also heard Ms. Maya Desai learned advocate for the appellant. It is contended by Ms. Desai that so far as the bus of the appellant is concerned, it was being driven on correct side of the road and, therefore, finding of negligence even to the extent of 20%, given by the Tribunal is erroneous. She has further submitted that even respondent no. 1 claimant has not pleaded any negligence on the part of the S.T. Bus. Hence, this appeal is required to be allowed.

4. The record shows that the width of the road at the relevant place is 20 ft. and half. On both the sides there are shoulders of 4 ft. each. There is curve at the place where the collision took place. The panchnama shows that the bus was about 3 ft away from 3 ft. wide middle line of the road which is painted in white, on its correct side. *Prima facie*, therefore, the Tribunal is right in holding that it was other vehicle which was mainly responsible for causing accident. However, the Tribunal has concluded that there was ample scope for the driver of the S.T. Bus to take the vehicle on his further left to avoid any collision between two vehicles. When he saw the other vehicle approaching the spot and at an excessive speed, the driver driving it in negligent and rash manner, it was the duty of the driver of the S.T. Bus to avert collision anyhow. Considering the contents of the panchnama, it clearly appears that he could have saved the bus, had he taken his vehicle away from the middle line towards the left i.e., on his correct side. That has not been done. As a result of the same, the passenger sustained serious injuries resulting into amputation of his left hand. In view of this, I do not see any error having been committed by the Tribunal in holding the driver of the S.T. Bus of the appellant negligent to the extent of 20%. There is no reason for me to disturb that finding.

5. After considering the injuries sustained by respondent no. 1 and the resultant amputation, I do not see any scope for the appellant to agitate any question on the quantum of compensation awarded by the Tribunal. In the instant case, the Tribunal was justified in awarding a sum of Rs.69,000=00 by way of compensation to respondent no. 1.

6. In short, I do not see any merit in this appeal and it is dismissed with no order as to costs.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

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